



June 3, 1999

Ms. Sandra Clark  
District Clerk  
Bee County  
301 North Washington  
Beeville, Texas 78102

OR99-1524

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125075.

The Bee County District Clerk (the "district clerk") received a request for "copies of affidavits for arrest warrants, affidavits for search warrants and search warrant returns related to a Jan. 16 burglary" at a particular address. You claim that the requested information is sealed by the Justice of the Peace for Precinct #4 and constitutes judicial records.<sup>1</sup> Alternatively, you claim that the information is excepted from disclosure by section 552.108 of the Government Code.

First, you state, "I do not believe these records are in my actual custody, other than for safe-keeping, because they were delivered to me in sealed and initialed envelopes, by the Justice of the Peace of Precinct 4 in Bee County." You further state, "I do not believe they belong to me, but instead belong to the J.P. who brought them here." Based on your representations, it appears that you are acting at the direction of the judge as the judge's agent; therefore, information held or collected by the district clerk, in this instance, is within the judge's constructive possession. *Cf.* Open Records Decision No. 513 (1988). Because section 552.003(b) of the Government Code specifically excludes the judiciary from the provisions of the Public Information Act, we conclude that the requested arrest warrant affidavits and search warrant returns are not subject to the Act and therefore need not be disclosed.

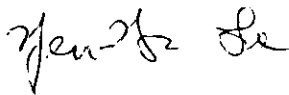
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<sup>1</sup>You inform us that the records are "sealed." However, you have not submitted a court order sealing the requested information.

As for the search warrant affidavits, "[t]he affidavit is public information if executed." Code Crim. Proc. art. 18.01(b). The statute means what it says without exception, and the Justice of the Peace does not have discretion to seal the search warrant affidavits once they have been executed. *Houston Chronicle Publ'g Co. v. Edwards*, 956 S.W.2d 813, 817 (Tex. App.-Beaumont 1997, orig. proceeding); *Houston Chronicle Publ'g Co. v. Woods*, 949 S.W.2d 492, 499 (Tex. App.-Beaumont 1997, orig. proceeding). Thus, the search warrant affidavits must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 125075

cc: Mr. Dan Parker  
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